

RE: CG Docket No. 02-278

To the Federal Communications Commission:

This comment is submitted on behalf of DealerTrack, Inc. in support of the Fax Ban Coalition's petition for the Commission to issue a declaratory ruling preempting laws such as California Business and Professions Code § 17538.43 that purport to regulate interstate facsimile transmissions.

DealerTrack provides on-demand software and data solutions for the automobile finance industry in the United States. We facilitate the electronic transmittal of information between our subscribing automobile dealers and financing sources and we have established a network of over 20,000 dealers and 170 financial institutions that use our services. Our credit application processing products enable the electronic transmittal of credit application data and credit decisions between dealers and financing sources in close to real time. Our products provide speed and efficiency in enabling consumers to obtain swift decisions on their automobile credit applications at a dealership. Our products streamline the car-buying process for American consumers by enabling automobile financing to be more proficient and less time-consuming for dealers, financing sources and consumers alike. We have brought auto finance from a paper world into an electronic world.

U.S. consumers purchased approximately 17 million automobiles last year. Both we and our subscribing automobile dealers and financing sources rely heavily on facsimile transmissions of information as an important means of communicating data and sending documents necessary to complete a consumer's purchase and financing of an automobile. DealerTrack alone sent over 15,000 facsimile transmissions last year and dealers typically complete each consumer's financing transaction by faxing a myriad of documents such as contracts, title applications, credit applications, and other documents necessary to close auto financing deals to their financing source partners. These facsimile transmissions collectively number in the in the millions if not the tens of millions. They represent an important way of

conducting interstate commerce given the national penetration of most automobile financing institutions.

We believe it is critical to the efficient operation of the automobile sales and financing business in the U.S. that there be a single uniform body of law and regulations relating to facsimile transmissions. We support the arguments of the Fax Ban Coalition that the Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227 and the Junk Fax Prevention Act of 2005, 119 Stat. 359 (2005), as well as the Commerce Clause of the United States Constitution, article 1 section 8, prohibit states such as California from attempting to regulate interstate facsimile communications especially when in doing so the state flatly contravenes federal law that provides for an “established business relationship” exception to any legal requirement to obtain approval to transmit certain facsimile communications.

Permitting individual states like California to impose rules and restrictions on interstate facsimile transmissions would disrupt the flow of information and create substantial and costly inefficiencies in the automobile financing industry. Dealers and lenders would each need to dedicate substantial time, resources and expenses to evaluate and attempt to comply with a possible plethora of state laws that may be contradictory prior to using electronic communications. The alternatives—using the U.S. mail or courier services to transmit documents and information—will impede the process of consumer purchases of automobiles by creating undue delays in mailing and processing paperwork. These costs would be passed on to consumers in the form of higher vehicle prices. In addition, the frustration of consumers needing to await vehicle delivery and make repeated trips to dealership showrooms would materially impede productivity.

Taken together, the Commerce Clause, the Telephone Consumer Protection Act and the Junk Fax Prevention Act of 1995 set forth a framework for regulation of interstate facsimile transmissions established by the Congress and place the regulatory authority in the FCC. Congress’ intent in promoting the federal objective of creating uniform national rules for interstate commerce and

communications was expressly stated in the legislative histories. In codifying the “existing business relationship” exception to the requirement to obtain prior consent to fax in the Junk Fax Prevention Act of 2005, the Congress made an affirmative decision to permit the free flow of commerce between entities such as our subscribing auto dealers and financing sources that need the unimpeded flow of electronic information to effectively and productively conduct their business.

The legal justifications for a preemptive ruling by the Commission are properly stated in the Fax Ban Coalition’s petition. We support those justifications on a legal basis and can attest to the need for uniformity and consistency in electronic communications from a business standpoint given the widespread use and utility of interstate facsimile communications in auto finance. American consumers and our economy in general are the winners when business is conducted efficiently, productively and in a uniform manner.

Accordingly, we urge the Commission to grant the declaratory relief sought by the Fax Ban Coalition’s petition and we believe doing so is critical to the automotive finance industry. Exercising the Commission’s established power to pre-empt the California statute and other state laws that have and may emerge purporting to regulate interstate facsimile transmissions is the most reasonable, cost-effective and appropriate way for the federal goals of uniformity in interstate commerce to be realized in this context.

We thank you for affording us the opportunity to comment and appreciate your consideration of our views.

Very truly yours,

DEALERTRACK, INC.